

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DOLLIE K. STICH)	
Claimant)	
)	
VS.)	
)	
HI-LO INDUSTRIES)	
Respondent)	Docket No. 1,021,318
)	
AND)	
)	
LUMBERMANS UNDERWRITING ALLIANCE)	
Insurance Carrier)	

ORDER

Claimant requests review of the May 6, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

ISSUES

The ALJ denied claimant's request for temporary total disability benefits as he found that claimant failed to meet her burden to show "that any potential psychological injury arose out of her injury."¹ He opined that he would reconsider this matter and order benefits if claimant could provide expert opinions that she has a psychological injury which arose out of her employment and injury and that she was taken off work for that reason.²

The claimant argues that the ALJ erred in denying her temporary total disability benefits. She contends that the ALJ ignored her uncontroverted testimony regarding her accident, the resulting orthopaedic problem, and the treating physician's direction that she not work until February 11, 2005. She also contends that she is eligible for temporary total disability benefits up to February 15, 2005 because the treating physician, Dr. Jeffrey

¹ ALJ Order (May 6, 2005).

² ALJ Order (May 6, 2005).

Dillow, again took her off work after she suffered an acute increase of symptoms after she attempted to return to work on February 11, 2005.³ Additionally, she contends that her psychiatrist's release from work is sufficient to extend her period off work to February 18, 2005 as it is uncontroverted that claimant is emotionally not ready to return to work around heavy machinery. Accordingly, claimant requests that the Board reverse the ALJ's decision and find her eligible for benefits from January 26, 2005 to February 18, 2005.

Respondent concedes claimant suffered a compensable injury on January 26, 2005 when a large panel cutting machine severed two of her fingers. And respondent further admits that it did have notice of claimant being taken off work by the treating physician, Dr. Jeffrey R. Dillow, from January 27, 2005 to February 10, 2005 for her injury and paid her for that time off. Respondent maintains it has, in fact, overpaid claimant. Respondent maintains it was not made aware of claimant's restricted release to return to work on February 1, 2005, which it could have accommodated had it known claimant was released, nor has claimant been off work for three consecutive weeks.⁴ Thus, respondent believes the ALJ's Order should be affirmed as it has no responsibility for temporary total disability benefits at the present time.

The sole issue for consideration is whether the ALJ erred in denying claimant's request for temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board finds that claimant's appeal must be dismissed.

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

³ Claimant's Brief at 1 (filed June 13, 2005).

⁴ K.S.A. 44-510c(b)(1).

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an administrative law judge if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested.

Here, there is no allegation that the ALJ exceeded his jurisdiction in any manner. The claimant has merely alleged the ALJ erred in failing to grant her request for temporary total disability benefits. At the preliminary hearing level, the issue of temporary total disability benefits rests solely with the ALJ. Absent an allegation that the ALJ exceeded his jurisdiction, this Board has no jurisdiction to substitute its judgment for that of the ALJ at this juncture. Accordingly, the claimant's appeal is dismissed.

WHEREFORE, it is the finding, decision and order of the Board that the claimant's appeal of Order of Administrative Law Judge Thomas Klein dated May 6, 2005, is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this _____ day of July, 2005.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
J. Scott Gordon, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director